111-764

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1266.

THE UNITED STATES EX REL. STEPHEN V. WHITE, PLAINTIFF IN ERROR,

vs.

JOHN J. KNOX, COMPTROLLER OF THE CURRENCY.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 5, 1884.

SUPREME COURT OF THE UNITED STATES.

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IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Petition for Mandamus. Filed October 1st, 1883.*

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA, upon the relation of Stephen V. White,
vs.
JOHN J. KNOX, Comptroller of the Currency. } At Law. No. —.

The relation of Stephen V. White, made upon oath, causes the court to be—

1. Informed that the relator is a citizen of the State of New York, and that the defendant is Comptroller of the Currency under the provisions of the laws of the United States providing for the creation and regulation of national banks.

2. That in December, A. D. 1875, the Miners' National Bank of Georgetown, Colorado, was a corporation created and doing business under said law at Georgetown, Colorado.

3. That about December 20th, 1875, the said Miners' National Bank failed, and under the provisions of the laws of the
2 United States a receiver was duly appointed, who took charge of and collected the assets of said bank, and paid them over to said defendant as comptroller as aforesaid.

4. That at the time of the failure of said bank this relator was a large creditor of said bank, and the receiver under instructions of said comptroller, refused to allow said claim of this relator upon proof before him.

5. That thereupon this relator brought suit in the district court of Clear Creek county, Territory of Colorado, which was a court of competent jurisdiction for the hearing of said cause.

6. That thereafter, upon the admission of the State of Colorado, said cause, by operation of the law admitting said State, was transferred to the circuit court of the United States for the district of Colorado, which was and is a court of competent jurisdiction for the trial thereof.

7. That such proceedings were had that thereafter, on the 23d day of June, A. D. 1883, this relator recovered judgment against the said Miners' National Bank for the sum of $\$104{,}523\frac{73}{100}$, which judgment is now in full force and unappealed from.

3 8. That under the provisions of section 5236 of the Revised Statutes of the United States the said defendant has made to the creditors of said bank of whose claims he approved, and which were uncontested, ratable dividends from time to time amounting in the aggregate to the sum of 65 per cent. of said claims, which dividends have been paid to the other claimants, creditors of said bank.

9. That under the provisions of the said law it is made the duty of said comptroller, especially enjoined by the law creating his office, to declare and pay to this relator a dividend equal to the dividends paid to the other creditors, to wit, to a dividend of $67,940.41.

10. That said defendant has paid on account of said indebtedness a sum of, which, with interest to June 23d, 1883, was equal to

$46,560.75, which money was received without prejudice to the rights of this relator to insist upon and secure such further sum as at law he is entitled.

11. That it is the duty of the said comptroller to draw his
4 warrant for and deliver and pay to this relator the further sum of $21,379.66, which duty is expressly enjoined by the law of the United States aforesaid.

12. That the said comptroller refuses so to do, though demand has been made therefor.

Wherefore the relator prays that an alternative writ of mandamus may issue from this court, directing the said defendant to show cause why he should not be directed to issue his warrant for $21,379.66, and deliver and pay the same to this relator, and that upon the hearing the said writ may be made imperative, and for other proper relief, with costs of the proceedings.

S. V. WHITE, *Relator.*

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Stephen V. White, the relator in the foregoing petition, makes solemn oath, and says that the foregoing petition is true.

S. V. WHITE.

Subscribed and sworn to before me, Oct. 1st, 1883.

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clk.*

5 *Stipulation. Filed October 1st, 1883.*

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA, upon the relation of Stephen V. White, *vs.* JOHN JAY KNOX, as Comptroller of Currency. } At Law. No. —. Petition for mandamus.

In the above cause, for the purpose of preventing delay, it is stipulated that the application for the alternative writ may be made on the first instance to the general term.

This consent is not to be construed as authorizing, admitting, or confirming any jurisdiction not belonging to the supreme court of the District of Columbia, and is only a waiver of application to the special term, which is not now in session.

S. V. WHITE, *Relator,*
NATH'L WILSON,
For Compt'r of Currency.

OCT 1ST, 1883.

6 *Order to Show Cause. Filed October 2d, 1883.*

In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, upon the relation of Stephen V. White,
vs.
JOHN JAY KNOX, Comptroller of the Currency. } At Law. No. 24788.

Upon reading the petition and stipulation for the writ of mandamus, filed in the above entitled cause, and upon considering the same, it is, this second day of October, A. D. 1883, ordered that the defendant show cause, on the 4th Monday of October, A. D. 1883, being October 22d, instant, before the court in general term, why the said writ of mandamus should not issue as prayed, and that a copy of this order be served on Nathaniel Wilson, the attorney appearing for the defendant, on or before October 3d, 1883.

By order of the court:

D. K. CARTTER, *Chief Justice.*

7 *Admission of Service of Copy of Order and Petition. Filed October 3d, 1883.*

In the Supreme Court of the District of Columbia.

UNITED STATES, ex rel. Stephen V. White,
vs.
JOHN JAY KNOX, Comptroller of Currency. } At Law, No. 24788.

Copies of order and petition in the above-entitled case rec'd.

NATHANIEL WILSON,
Atty for J. J. Knox.

Oct. 3d, 1883.

Return in the Nature of Plea to Jurisdiction. Filed October 22d, 1883.

In the Supreme Court of the District of Columbia.

THE UNITED STATES, ex rel. Stephen V. White,
vs.
JOHN JAY KNOX, Comptroller of Currency. } At Law, No. 24788.

8 To the honorable the judges of the supreme court of the District of Columbia:

The undersigned, John Jay Knox, Comptroller of the Currency, respectfully represents and states:

That he has been served with an order or rule from this honorable court to show cause why a writ of mandamus should not be issued from said court, directed to him as the Comptroller of the Currency, commanding him to issue his warrant for $21,379.66, and deliver and pay the same to the relator, the said Stephen V. White, as prayed in the petition of the relator.

And the undersigned submits to your honors that from said petition, and from the statutes of the United States prescribing the du-

ties of the Comptroller of the Currency, it appears that your honors have no jurisdiction in the matter of said petition, and cannot grant the writ prayed for by said relator.

I. Because the bureau of which the Comptroller of the Currency is chief officer is a bureau in the department of the Treasury of the United States, and the Comptroller of the Currency is requred
9 by law to perform his duties under the direction of the Secretary of the Treasury.

II. Because the subject-matter of the petition is purely of executive cognizance, resting in the judgment and discretion of the executive officers of the Treasury, in the ordinary discharge of their official duties.

III. Because the subject-matter is one in which judgment and discretion are to be exercised.

JOHN JAY KNOX,
Comptroller of the Currency.

Oct. 20th, 1883.
NATH'L WILSON,
Att'y for Defendant.

Demurrer. Filed October 22d, 1883.

In the Supreme Court of the District of Columbia. General Term.

THE UNITED STATES, ex rel. S. V. White,
vs.
JOHN JAY KNOX, Comptroller. } At Law, No. 24788.

10 The plaintiff now comes, and to the plea to the jurisdiction of the court, as by defendant, pleaded, demurs for that:

1st. The Treasury Department is answerable to the judicial department for the performance of all acts specially enjoined by law, each officer for the acts enjoined upon himself.

2. While the distribution of dividends as to time and amount may be discretionary, the equal distribution, when ordered, is mandatory.

And as to the sufficiency of said plea, as pleaded, plaintiff puts itself upon the country.

S. V. WHITE,
Relator, in Person.

Proceedings before Supreme Court of the District of Columbia, in general term, commencing the first Monday, being the first day of October, A. D. 1883.

MONDAY, *December 3d*, 1883.

Session resumed pursuant to adjournment. Present Chief Justice Carter and Justices Cox and James.

11 UNITED STATES OF AMERICA ex rel. Stephen White,
vs.
JOHN J. KNOX, Comptroller of the Currency. } At Law. No. 24788.

This cause comes on to be heard on the third day of December,

A. D. 1883, upon the demurrer of the plaintiff to the defendant's plea to the jurisdiction herein filed, and upon consideration thereof the court overruled said demurrer and sustained the plea as herein pleaded, wherefore it is considered and adjudged by the court that the petition herein be dismissed, with costs, and that defendant go hence without day. And plaintiff having given notice of intention to prosecute a writ of error, the bond for costs on said writ is fixed at five hundred dollars, to be approved by the court.

TUESDAY, *February 5th, A. D.* 1884.

Session resumed, pursuant to adjournment. Present, Chief Justice Cartter and Justices Cox and James.

12 THE UNITED STATES upon the relation of S. V. White, *vs.* JOHN J. KNOX, as Comptroller of the Currency. | At Law. No. 24788. In error.

The relator, S. V. White, presents to the court his bond for the prosecution of a writ of error to the Supreme Court of the United States from the judgment of this court in the above-entitled cause, and prays that it be approved, which is done accordingly, John B. Hamilton, surety.

In the Supreme Court of the District of Columbia, the 5th day of February, 1884.

13 (Filed Feb. 5, 1884—R. J. Meigs, clerk.)

THE UNITED STATES, upon relation of S. V. White, *vs.* JOHN JAY KNOX, as Comptroller of the Currency. | No. 24788. In Error.

KNOW all men by these presents, that we, Stephen V. White, of Brooklyn, N. Y., and John B. Hamilton, of Washington, D. C., are bound unto the above-named John Jay Knox, as Comptroller, in the sum of five hundred ———, to be paid to the said John Jay Knox, as Comptroller of the Currency, or his successor in office; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 5th day of February, 1884.

Whereas the above-named United States, upon relation of said Stephen V. White, has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia.

Now, therefore, the condition of this obligation is, that if the above-named United States, upon relation aforesaid, shall prosecute his said writ to effect, and answer all damages and costs if he shall fail

to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

S. V. WHITE.
JOHN B. HAMILTON.

Sealed and delivered in presence of—

Approved by court, Feb. 5, 1884. *Vide* 5, M. G. T., p. 6.

14 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between The United States of America, *ex relatione* Stephen V. White, and John J. Knox, Comptroller of the Currency, No. 24788 at law, a manifest error hath happened, to the great damage of the said relator, as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 5th day of February, in the year of our Lord 1884, and of the independence of the United States the one hundred and eighth.

[SEAL.] R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To John J. Knox, Comptroller of the Currency:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein The United States, *ex rel.* Stephen V. White, is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done to the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of thistrict of Columbia.

D. K. CARTTER, *Chief Justice.*

Service acknowledged this 5th day of February, 1884.

NATH'L WILSON,

15 *Authentication of Record. Clerk's Certificate.*

CLERK'S OFFICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA:

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in this office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 24th day of February, 1884.

[SEAL.] R. J. MEIGS, *Clerk.*
By J. JAY CAMP, *Assistant Clerk.*

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by Return J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 24th day of February, 1884.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, Return J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 24th day of February, 1884.

[SEAL.] R. J. MEIGS, *Clerk.*
By J. JAY CAMP, *Assistant Clerk.*

Endorsed on cover: Dist. of Col. sup. court. No. 1266. The United States *ex rel.* Stephen V. White, pl'ff in error, *vs.* John J. Knox, Comptroller of the Currency. Filed 5th March, 1884.

111-704

Supreme Court of the U. S.

OCTOBER TERM 1883.

THE UNITED STATES UPON RELATION OF STEPHEN V. WHITE,
Plaintiff in Error

vs.

JOHN JAY KNOX, COMPTROLLER OF THE CURRENCY,
Defendant in Error.

No. 1266.

BRIEF OF PLAINTIFF IN ERROR

S. V. WHITE,
for Plaintiff in Error.

Henkle & Polkinhorn, Prs., Washington, D. C.

Supreme Court of the U. S.

OCTOBER TERM 1883.

THE UNITED STATES UPON RELATION OF STEPHEN V. WHITE, *Plaintiff in Error*

vs.

JOHN JAY KNOX, COMPTROLLER OF THE CURRENCY, *Defendant in Error.*

No. *1266.*

For convenience of reference the entire record in this case is printed on p. 8, *et seq.*

This is a writ of error prosecuted to the Supreme Court of the District of Columbia to reverse a judgment of that court, denying a peremptory writ of mandamus to the defendant as Comptroller of the Currency. By the proceedings in the court below, plaintiff sought to compel said comptroller to make a ratable dividend of 65 per cent. upon the amount of a judgment of the Circuit Court of the United States for the District of Colorado in favor of plaintiff, against the Miners' National Bank, of Georgetown Colorado, which dividend should equal the percentage paid upon the claims of other creditors which had been proved to the satisfaction of said comptroller without any legal contest.

The relator (page 1 of the record,) states the simple facts: (1.) That he was a creditor of the failed National

Bank. (2.) That the defendant in error rejected the relator's claim. (3.) That a litigation ensued from 1876 till June 23rd, 1883, resulting in a judgment in favor of relator against said bank for $104,523.72, which judgment is in force. (4.) That dividends of 65 per cent. have been paid upon all claims of other creditors allowed by defendant. (5.) That it was the duty of the defendant to pay 65 per cent. of $104,523.72—say $67,940,41. (6.) That he refused to do this, but declared a dividend for $46,560.75, leaving the balance to await the result of this contest, which sum he refused to pay though demanded.

The defendant in error filed a return to the alternative writ which he styled a "return in the nature of a plea to jurisdiction." (Page 3 of record.)

To this plea plaintiff demurred. The court overruled demurrer and gave judgment for defendant, dismissing the petition, and plaintiff now assigns such judgment as error.

The present litigation is a continuance of a contest which was before this court at the October term, 1880. (See White *vs.* National Bank, 102 U. S., page 658) which cause was finally heard in Colorado on June 23rd, 1883, with the result before stated.

The gravamen of this present contention between the relator and comptroller is, whether the comptroller is required under the law to declare and pay relator 65 per cent. of his judgment, or whether he retains an equitable jurisdiction under which he may take the judgment as a basis and from it figure out how much was due the relator at the time the bank failed, and pay 65 per cent. of that sum arbitrarily stated by the comptroller.

The court below decided in effect that the comptroller has such equitable discretion, and the relator contends

that it erred in such decision, and assigns said ruling as error here.

The parties hereto desire the court, waiving all technicalities, to decide the question thus presented. And in behalf of plaintiff in error counsel here consents that the return may be taken as a demurrer to the petition or plea to the jurisdiction, or both, so that the question may be set at rest as to the rights of the relator to have a percentage upon his judgment as finally rendered, including as it does, the interest accrued on the claim *pend nte lite*.

The language of section 5236 is as follows:

"The comptroller shall make a ratable dividend of the money paid over to him by the receiver on all such claims as may have been proved to his satisfaction or *adjudicated* in a court of competent jurisdiction, and as the proceeds of the assets of such association are paid over to him shall make further dividends on all claims previously proved or *adjudicated*."

It will not be denied that the powers and duties of the comptroller are exactly what a correct interpretation of this section authorizes and requires. The legislature might have required that all claims should be adjudicated by a court of competent jurisdiction, or it might have conferred quasi-judicial powers upon the comptroller.

It is our purpose here to determine what powers the legislature did confer.

1. The first question to be determined is: Are the words of the statute free from ambiguity, for in such case the plain usual interpretation of the words should be the judicial interpretation of their meaning in the statute.

What, then, is the fair meaning of the words "claims adjudicated by a court of competent jurisdiction?"

Webster defines the transitive verb "adjudicate," as follows: "to adjudge; to try and determine, as a court."

Worcester defines the same verb, "to sentence; to adjudge;" and running back one step he defines the word adjudge as follows: "to settle; to determine; to decree by judicial sentence."

Substituting Webster's periphrase, the statute would read, claims "*adjudged*" or "*tried and determined*" by a court of competent jurisdiction.

Substituting Worcester's periphrase, the statute would read, claims "*adjudged*," or "*settled*," or "*determined*," or "*decreed by judicial sentence*" of a court of competent jurisdiction.

In either case is there any doubt but that it is the final *judgment* of the court that is the only evidence of what the court adjudges, or settles, or determines, or decrees by judicial sentence?

We are led, then, to the irresistable conclusion that there is no ambiguity in the words of the law, and that the plain natural interpretation of the law would give a dividend under the facts as stated in the relation upon this final judgment, rendered by the court in Colarado.

2. But the comptroller is haunted by the thought of the grave want of equity in a decision, whereby the relator would get a dividend upon the interest on the demand, while the same was in litigation, whereas (all claims not being paid in full,) the other creditors would not get such interest.

Now, let us examine the question and see whether there are such overruling equities in favor of the comptroller's position that a court would be justified in holding that the legislature intended results not obtained under the plain interpretation of the statute. Does the comptroller's position secure even-handed justice?

The judgment of the Colorado court conclusively settled that at the time the bank failed the relator was a creditor.

Under a mistaken sense of duty, as custodian of its assets, the comptroller resisted to the end the relator's just claim. In such resistance he paid from the fund thousands of dollars, expenses of the defense, and put the relator to an expense of thousands of dollars in prosecuting his claim. In point of fact the relator's claim was about one-half of the entire indebtedness of the bank, so that one-half the money expended in attemping to defeat relator's claim was taken from himself.

Other creditors received partial dividends in 1876, a few months after the bank failed, and had the use of such money so paid them. The relator received his first dividend years afterwards, and after a seemingly interminable litigation.

Now, it has not occured to the defendant in error, exercising self-imposed chancery jurisdiction to offer to pay, the relator's interest on the dividends that would put him on eqality with other creditors who have had the use of their money all these years. On the other hand, he has absolutely refused to allow any interest in any form whatever, and has claimed the right to analyse the judgment and find out how much would have been due on the day the bank failed, as per his self-imposed computation, and on that and nothing else, he will pay ratable dividend.

Plaintiff in error does not complain that the defendant resisted the allowance of relator's claim, under an honest, though mistaken sense of duty as trustee of the failed bank.

But plaintiff claims that such resistance was assumed, *cum onere*, or indeed in this case *cum oneribus*.

The wager of battle, which the defendant assumed at the commencement of litigation, was this: If he succeeded in defeating the relator's claim all other creditors would be paid in full. If he failed, he must pay out of an already inadequate fund the expenses of the litigation and a dividend on the amount as adjudicated, whether the same was more or less than relator would have accepted without a contest.

What relator here complains of is that the comptroller having brought on an engagement refuses the victor the share of the spoils which the law awards him.

3. Now, having presented what we believe the duty clearly enjoined by law upon the comptroller, we come to the discussion of the character of the act, which the relator invokes the aid of the judiciary to compel the comptroller to perform.

It will not be contended in view of the decisions in Kendall, Postmaster Gen'l *vs.* United States, 12 Peters, 624, and United States *vs.* Schurz, 102 U. S. 394, that the Supreme Court of the District of Columbia has not jurisdiction to grant a mandamus against an executive officer specially charged under the law, with the performance of a ministerial act. The only question then, in this case, is the payment of a ratable dividend of 65 per cent. on the judgment of the Colorado Court, a ministerial act, or does it require the exercise of a judicial discretion?

It seems clear to the plaintiff in error that the duty was a ministerial one (only) under the section of the statute quoted. The comptroller is vested with discretion in certain cases. He may allow or reject a claim. Upon his rejection of a claim the right of action in a court remains to the claimant.

When he has sued upon it the comptroller has the discretion as to how far he will press the defence.

If the relator had sought to compel the comptroller to allow the claim by action of a mandamus there he would have attempted to control a judicial discretion and the writ would properly have been denied. If the receiver of the failed bank had sought to compel him to defend against a claim there he would have had a discretion and mandamus would not lie.

But when the court adjudicates the claim the comptroller has no discretion, but there is left to him the naked ministerial duty of paying ratable dividends on that with other claims.

The analogy between the case at bar and Kendall *vs.* U. S., 12 Peters, 524 is very close. There the duty was to enter a credit to Stokes, Stockton & Moore of $161,563.93. The Postmaster-General exercised the discretion of crediting them $122,101.46 and refused to credit them $39,462.47 and the court compelled him to allow the additional credit.

In the case at bar it appears from the petition which is here confessed by the return to the writ that it was the duty of the comptroller to pay $67,940.41. He has arbitrarily decided to pay $46,560.75, and refuses to pay $21,379.66. We confidently expect that this court will require such payment to be made.

S. V. WHITE,
for Plaintiff in error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No 1266.

THE UNITED STATES EX REL. STEPHEN V. WHITE, PLAINTIFF IN ERROR,

vs.

JOHN J. KNOX, COMPTROLLER OF THE CURRENCY.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Petition for Mandamus. Filed October 1st, 1883.*

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA, upon the relation of Stephen V. White, *vs.* JOHN J. KNOX, Comptroller of the Currency. } At Law. No.—.

The relation of Stephen V. White, made upon oath, causes the court to be—

1. Informed that the relator is a citizen of the State of New York and that the defendant is Comptroller of the Currency under the provisions of the laws of the United States providing for the creation and regulation of national banks.

2. That in December, A. D. 1875, the Miners' National Bank of Georgetown, Colorado, was a corporation created and doing business under said law at Georgetown, Colorado.

3. That about December 20th, 1875, the said Miners' National Bank failed, and under the provisions of the laws of the
2 United States a receiver was duly appointed, who took charge of and collected the assets of said bank, and paid them over to said defendant as comptroller as aforesaid.

4. That at the time of the failure of said bank this relator was a large creditor of said bank, and the receiver under instructions of said comptroller, refused to allow said claim of this relator upon proof before him.

5. That thereupon this relator brought suit in the district court of Clear Creek county, Territory of Colorado, which was a court of competent jurisdiction for the hearing of said cause.

6. That thereafter, upon admission of the State of Colorado, said cause, by operation of the law admitting said State, was transferred to the circuit court of the United States for the district of Colorado, which was and is a court of competent jurisdiction for the trial thereof.

7. That such proceedings were had that thereafter, on the 23d day of June, A. D. 1883, this relator recovered judgment against the said Miners' National Bank for the sum of $104,523.72 which judgment is now in full force and unappealed from.

3 8. That under the provisions of section 5236 of the Revised Statutes of the United States the said defendant has made to the creditors of said bank of whose claims he approved, and which were uncontested, ratable dividends from time to time amounting in the aggregate to the sum of 65 per cent. of said claims, which dividends have been paid to the other claimants, creditors of said bank.

9. That under the provisions of the said law it is made the duty of said comptroller, especially enjoined by the law creating his office, to declare and pay to this relator a dividend equal to the dividends paid to the other creditors, to wit, to a dividend of $67,940.41.

10. That said defendant has paid on account of said indebtedness a sum of, which, with interest to June 23d, 1883, was equal to

$46,560.75, which money was received without prejudice to the rights of this relator to insist upon and secure such further sum as at law he is entitled.

11. That it is the duty of the said comptroller to draw his
4 warrant for and deliver and pay to this relator the further sum of $21,379.66, which duty is expressly enjoined by the law of the United States aforesaid.

12. That the said comptroller refuses so to do, though demand has been made therefor.

Wherefore the relator prays that an alternative writ of mandamus may issue from this court, directing the said defendant to show cause why he should not be directed to issue his warrant for $21,379.66 and deliver and pay the same to this relator, and that upon the hearing the said writ may be made imperative, and for other proper relief, with costs of the proceedings.

S. V. WHITE, *Relator.*

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

Stephen V. White, the relator in the foregoing petition, makes solemn oath, and says that the foregoing petition is true.

S. V. WHITE.

Subscribed and sworn to before me, Oct 1st, 1883.

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clk.*

5 *Stipulation. Filed October 1st, 1883.*

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA, upon the relation of Stephen V. White, *vs.* JOHN J. KNOX, as Comptroller of Currency. } At Law. No. —. Petition for mandamus.

In the above cause, for the purpose of preventing delay, it is stipulated that the application for the alternative writ may be made on the first instance to the general term.

This consent is not to be construed as authorizing, admitting, or confirming any jurisdiction not belonging to the supreme court of the District of Columbia, and is only a waiver of application to the special term, which is not now in session.

S. V. WHITE, *Relator,*
NATH'L WILSON,
For Compt'r of Currency.

OCT. 1ST, 1883.

6 *Order to Show Cause. Filed October 2d, 1883.*

In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, upon the relation of Stephen V. White,
vs.
JOHN JAY KNOX, Comptroller of the Currency. } At Law. No. 24788.

Upon reading the petition and stipulation for the writ of mandamus, filed in the above entitled cause, and upon considering the same, it is, this second day of October, A. D. 1883, ordered that the defendant show cause, on the 4th Monday of October, A. D. 1883, being October 22d, instant, before the court in general term, why the said writ of mandamus should not issue as prayed, and that a copy of this order be served on Nathaniel Wilson, the attorney appearing for the defendant, on or before October 3d, 1883.

By order of the court :

D. K. CARTTER, *Chief Justice.*

7 *Admission of Service of Copy of Order and Petition. Filed October 3d, 1883.*

In the Supreme Court of the District of Columbia.

UNITED STATES, ex rel. Stephen V. White,
vs.
JOHN JAY KNOX, Comptroller of Currency. } At Law, No. 24788.

Copies of order and petition in the above-entitled case rec'd.

NATHANIEL WILSON,
Att'y for J. J. Knox.

Oct. 3d 1884.

Return in the Nature of Plea to Jurisdiction. Filed Octob r 22d, 1883.

In the Supreme Court of the District of Columbia.

THE UNITED STATES, ex rel. Stephen V. White,
vs.
JOHN JAY KNOX, Comptroller, of Currency. } At Law, No. 24788.

8 To the honorable the judges of the supreme court of the District of Columbia :

The undersigned, John Jay Knox, Comptroller of the Currency, respectfully represents and states :

That he has been served with an order or rule from this honorable court to show cause why a writ of mandamus should not be issued from said court, directed to him as the Comptroller of the Currency, commanding him to issue his warrant for $21,379.66, and deliver and pay the same to the relator, the said Stephen V. White, as prayed in the petition of the relator.

And the undersigned submits to your honors that from said petition, and from the statutes of the United States prescribing the du-

ties of the Comptroller in the Currency, it appears that your honors have no jurisdiction in the matter of said petition, and cannot grant the writ prayed for by said relator.

I. Because the bureau of which the Comptroller of the Currency is chief officer is a bureau in the department of the Treasury of the United States, and the Comptroller of the Currency is required
9 by law to perform his duties under the direction of the Secretary of the Treasury.

II. Because the subject-matter of the petition is purely of executive cognizance, resting in the judgment and discretion of the executive officers of the Treasury, in the ordinary discharge of their official duties.

III. Because the subject-matter is one in which judgment and discretion are to be exercised.

JOHN JAY KNOX,
Comptroller of the Currency.

Oct. 20th, 1885.
NATH'L WILSON,
Att'y for Defendant.

Demurrer. Filed October 22d, 1883.

In the Supreme Court of the District of Columbia. General Term.

THE UNITED STATES, ex rel. S. V. White,
vs.
JOHN J. KNOX, Comptroller. } At Law, No. 24788.

10 The plaintiff now comes, and to the plea to the jurisdiction of the court as by defendant, pleaded, demurs for that:

1st. The Treasury Department is answerable to the judicial department for the performance of all acts especially enjoined by law, each officer for the acts enjoined upon himself.

2. While the distribution of divivends as to time and amount may be discretionary, the equal distribution, when ordered, is mandatory.

And as to the sufficiency of said plea, as pleaded, plaintiff puts itself upon the country.

S. V. WHITE,
Relator, in person.

Proceedings before Supreme Court of the District of Columbia, in general term, commencing the first Monday, being the first day of October, A. D. 1883.

MONDAY, *December 3d*, 1883.

Session resumed pursuant to adjournment. Present Chief Justice Cartter and Justices Cox and James.

11 UNITED STATES OF AMERICA ex rel. Stephen White
vs.
J. J. KNOX, Comptroller of the Currency. } At Law. No. 24788.

This cause comes on to be heard on the third day of December,

A. D. 1883, upon the demurrer of the plaintiff to the defendant's plea to the jurisdiction herein filed, and upon consideration thereof the court overruled said demurrer and sustained the plea as herein pleaded, wherefore it is considered and adjudged by the court that the petition herein be dismissed, with costs, and that defendant go hence without day. And plaintiff having given notice of intention to prosecute a writ of error, the bond for costs on said writ is fixed at five hundred dollars, to be approved by the court.

TUESDAY, *February 5th, A. D.* 1883.

Session resumed, pursuant to adjournment. Present, Chief Justice Carter and Justices Cox and James.

12 THE UNITED STATES upon the relation of S. V. White, *vs.* John J. Knox, as Comptroller of the Currency. } At law. No. 24788 In error.

The relator, S. V. White, presents to the court his bond for the prosecution of a writ of error to the Supreme Court of the United States from the judgment of this court in the above-entitled cause, and prays that it be approved, which is done accordingly, John B. Hamilton, surety.

In the Supreme Court of the District of Columbia, the 5th day of February, 1884.

13 (Filed Feb. 5, 1884—R. J. Meigs, clerk.)

THE UNITED STATES upon the relation of S. V. White, *vs.* JOHN JAY KNOX, as Comptroller of the Currency. } No. 24788. In Error.

Know all men by these presents, that we, Stephen V. White, of Brooklyn, N. Y., and John B. Hamilton, of Washington, D. C., are bound unto the above-named John Jay Knox, as Comptroller, in the sum of five hundred ——, to be paid to the said John Jay Knox, as Comptroller of the Currency, or his successor in office; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 5th day of February, 1884.

Whereas the above named United States, upon relation of said Stephen V. White, has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia.

Now, therefore, the condition of this obligation is, that if the above-named United States, upon relation aforesaid, shall prosecute his said writ to effect, and answer all damages and costs if he shall fail

to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

S. V. WHITE.
JOHN B. HAMILTON.

Sealed and delivered in presence of—

Approved by court, Feb. 5, 1884. *Vide* 5, M. G. T., p. 6.

14 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between The United States of America, *ex relatione* Stephen V. White, and John J. Knox, Comptroller of the Currency, No. 24788 at law, a manifest error hath happened, to the great damage of the said relator, as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Sepreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law rnd custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 5th day of February, in the year of our Lord 1884 and of the independence of the United States the one hundred and eighth.

[SEAL.] R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To John J. Knox, Comptroller of the Currency:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein The United States, *ex rel.* Stephen V. White, is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected so that speedy justice be done to the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER, *Chief Justice.*

Service acknowledged this 5th day of February, 1884.

NATH'L WILSON.

15 *Authentication of Record. Clerk's Certificate.*

CLERK'S OFFICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA:

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in this office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 24th day of February, 1884.

[SEAL] R. J. MEIGS, *Clerk.*
By J. JAY CAMP, *Assistant Clerk.*

Justice's Certificate

I, David K. Cartter. chief justice of said court, do certify the foregoing attestation by Return J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 24th day of February, 1884.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, Return J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 24th day of February, 1884.

[SEAL.] R. J. MEIGS, *Clerk,*
By J. JAY CAMP, *Assistant Clerk.*

Endorsed on cover: Dist. of Col. sup. court. No. 1266. The United States *ex rel.* Stephen V. White' pl'ff in error, *vs.* John J. Knox, Comptroller of the Currency. Filed 5th March, 1884.

111-784

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 1266.

THE UNITED STATES, ex rel. STEPHEN V. WHITE,

Plaintiff in Error,

vs.

JOHN J. KNOX, Comptroller of the Currency,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Brief for Defendant in Error.

NATHANIEL WILSON,
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

THE UNITED STATES, *ex rel.* STEPHEN V. WHITE, *Plaintiff in Error*,
vs.
JOHN J. KNOX, COMPTROLLER OF THE CURRENCY, *Defendant in Error.*
No. 1,266.

In Error to the Supreme Court of the District of Columbia.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

The plaintiff in error filed his petition in the Supreme Court of the District of Columbia praying that an alternative writ of *mandamus* issue directing the defendant in error, the Comptroller of the Currency, to show cause why he should not be directed to issue his warrant for $21,379.66, and deliver and pay the same to the relator.

The petition alleges that the relator was a creditor of the Miners' National Bank of Georgetown, Colorado, at the time of its failure in December, 1875; that the receiver of the bank, at the direction of the Comptroller of the Currency, refused to allow his claim, and that thereupon he brought suit, and on the 23d day of June, 1883, recovered a judgment against the bank for $104,523.72.

The petition also alleges that the Comptroller of the

Currency has from time to time made to the creditors of the bank, whose claims were approved by him, ratable dividends, amounting in the aggregate to sixty-five per cent. of their claims; that it is the duty of the Comptroller to pay to the relator a dividend equal to the dividends paid to the other creditors, to wit, a dividend of $67,940.41, that sum being sixty-five per cent. of $104,523.72, the amount of the judgment obtained by him; that he, the relator, has been paid dividends which, with interest, amount to $46,560.75; and that there is due him the difference between said sum of $67,940.41 and said sum of $46,560.75; that is to say, the sum of $21,379.66, for which amount it is prayed that the Comptroller may be required to issue his warrant to the relator.

Record, pp. 1–2.

To this petition a return in the nature of a plea to the jurisdiction was filed, in which it is stated that the Comptroller of the Currency is required by law to perform his duties under the direction of the Secretary of the Treasury; that the subject-matter of the petition is one in which judgment and discretion are to be exercised, and is of purely executive cognizance resting in the judgment and discretion of the executive officers of the Treasury in the ordinary discharge of their official duties.

Record, pp. 3–4.

To this return the relator interposed a demurrer.

Record, p. 4.

The court below dismissed the petition.

To reverse that judgment, the present writ of error is brought.

Record, p. 5.

The duty of the Comptroller of the Currency in relation to the collection and distribution of the assets of in-

solvent banks is defined by sections 5234 and 5236 of the Revised Statutes.

Section 5234 provides that the receiver appointed by the Comptroller shall collect all moneys due the bank and pay over all money collected by him to the Treasurer of the United States, in whose possession it shall be subject to the order of the Comptroller.

Section 5236 is as follows:

"From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the Comptroller shall make a ratable dividend of the money so paid over to him by such receiver, on all such claims as may have been proved to his satisfaction, or adjudicated in a court of competent jurisdiction, and as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated, and the remainder of the proceeds, if any, shall be paid over to the shareholdors of such association, or their legal representatives, in proportion to the stock by them respectively held."

The official relations between the Comptroller and the Secretary of the Treasury are defined by section 325 of the Revised Statutes, which provides that:

"There shall be in the Department of the Treasury a bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds, the chief officer of which bureau shall be called the Comptroller of the Currency, and shall perform his duties under the general direction of the Secretary of the Treasury."

ARGUMENT.

I.

The petition does not present a *prima facie* case of duty and obligation on the part of the defendant in error to perform the act required of him.

It does not allege that it is in the power of the Comptroller to deliver and pay to the relator the sum of $21,379.66 asserted to be due him.

It does not allege that there is, or ought to be, in the possession or under the control of the Comptroller, the sum of $21,379.66, or any other sum of money applicable to the discharge of the indebtedness of the Miners Bank, and subject to the check or order of the Comptroller, and applicable to the relator's claim.

These are material averments and without them the petition is fatally defective.

Morse on Mandamus, 205.

Redding *vs.* Bell, 4 Cal. R., 233.

II.

If it were alleged in the petition, as it is not, that the Comptroller has in his possession or under his control sufficient moneys to satisfy the relator's claim, and if that claim were asserted and admitted to be a valid and subsisting one, the question of the use of that money, and of its applicability to the payment of the relator's particular debt would evidently involve in its determination the exercise by the Comptroller of judgment and discretion in the ordinary discharge of his official duties.

The assets of all insolvent national banks, when collected by their receivers, are required, by the statute already referred to, to be paid to the Treasurer of the United States.

The moneys so collected and deposited are subject to

the order of the Comptroller, whose duty it is to disburse them in the manner prescribed by the statute.

Full provision is required in the first place to be made for refunding to the United States any deficiency in redeeming the notes of the association.

The second charge upon the fund is the expense incident to the receivership and the final settlement of the affairs of the bank.

In determining what disposition should be made of the money on hand at any particular time, and in determining whether or not that money can properly be applied to the payment of one particular claim, the Comptroller must ascertain and decide what proportion of the moneys should be retained to meet the necessary expenses of the receivership, what should be reserved to meet unclaimed dividends, and also what is due in respect of other claims.

That is to say, no disposition can be made by the Comptroller of the moneys deposited subject to his order and not included in or covered by dividends previously declared, without taking into consideration and providing for all claims upon the fund, as well those of the general creditors as those which are by statute entitled to preference.

Considered, therefore, merely with reference to the payment of the relator's demand and to the fund, if any there is, out of which payment can be made, this case seems within the rule so frequently laid down by this court, that a writ of *mandamus* can not issue to control an officer of the Government in the manner of conducting the general duties of his office wherein judgment and discretion are to be exercised.

In the case of Decatur *vs.* Paulding, (14 Peters, 497), the court, in explaining the difference between executive duties and ministerial acts, after referring to the obligations imposed upon the Secretary of the Navy, under a

resolution of Congress, to construe the law and to determine certain questions as to the rate of pay, says:

"And after all this was done he must have inquired into the condition of the navy pension fund and the claims upon it in order to ascertain whether there was money enough to pay all the demands upon it, and if not money enough how it was to be apportioned among the parties entitled. A resolution of Congress requiring the exercise of so much judgment and *investigation* can with no propriety be said to command a merely ministerial act to be done by the Secretary.

"The interference of the courts with the performance of the ordinary duties of the executive departments of the Government would be productive of nothing but mischief, and we are quite satisfied that such a power was never intended to be given to them."

In Brashear *vs.* Mason, 6 Howard, 92, Judge Nelson said:

"Besides the duty of inquiring into and ascertaining the rate of compensation that may be due to the officers under the laws of Congress, no payment can be made unless there has been an appropriation for the purpose, and if made it may have been already exhausted, or prior requisitions may have issued sufficient to exhaust it. The Secretary is obliged to inquire into the condition of the fund, and the claims already charged upon it in order to ascertain if there is money enough to pay all the accruing demands, and if not enough how it shall be apportioned among the parties entitled to it."

III

The correctness of the judgment of the court below, dismissing the relator's petition, could, we think, be sustained for the reasons already presented, if it were admitted that the claim in the petition that there is due and

payable to the relator the sum of $21,379.66, were of obvious and admitted validity.

But it is manifest from the petition that it is primarily the duty of the Comptroller to consider and determine the nature and validity of the claim made in the petition, and that this is a duty separate from, and one that necessarily precedes the duty of determining in what way the claim, if valid, is to be paid.

The claim made in the petition is that the relator is entitled to receive, and the Comptroller is bound to pay, a designated sum of money, which it is alleged is the difference between the amount of a judgment obtained by him and the amount received from the Comptroller in respect of dividends declaredwith interest, from the date of the payment of the dividends.

It is to be observed that the Comptroller does not in any way question, and has, indeed, no right to question, the validity of the judgment entered in favor of the relator for the sum of $104,523.72.

That judgment having been entered by a court of competent jurisdiction, is of course final and conclusive.

The claims of creditors of insolvent banks, who obtain judgments, stand on precisely the same footing as the claims approved by the Comptroller.

They are both of the same efficacy and "occupy the same legal ground."

Nat. Bank *vs.* Mechanics' Nat. Bank, 94 U. S., p. 439.

The inquiries and investigation which the Comptroller is required to make relate, therefore, not to the judgment, but to the demand for the poyment of a portion of the judgment, an alleged balance due, out of a particular fund.

The other creditors of the bank having received but sixty-five per cent. of the principal of their indebtedness, and the relator having received precisely the same dividends on the principal of the indebtedness due him, the

Comptroller is called upon to decide, and to conform in his official action to the decision, that the relator is entitled to an additional dividend in respect of the interest that accrued on his claim from the time of the failure of the bank and was included in his judgment.

The determination of such a question, and the payment of such a claim, certainly cannot be considered merely ministerial acts.

In the case of the State of Mississippi *vs.* Johnson, (4 Wall., 468), this court said:

"A ministerial duty, the performance of which may in proper cases be required of the head of a department by judicial process, is one in respect of which nothing is left to discretion. It is a simple definite duty arising under conditions admitted or found to exist and imposed by law."

The case is, therefore, within the rule which forbids judicial interference with the exercise of executive discretion.

Gaines *vs.* Thompson, 7 Wall., 353.
Secretary *vs.* McGarrahan, 9 Wall., 298.
United States *vs.* McLean, 95 U. S., 750.
Marquez *vs.* Frisbie, 101 U. S., 473.

IV.

If it were competent here, and in this proceeding, to review the action of the Comptroller in refusing to comply with the relator's demand, and pay to him the balance which he claims to be due, the correctness of the Comptroller's decision would plainly appear.

As the relator's judgment includes interest on the principal of his debt from the date of the failure of the bank, he having already received the dividends due in respect of the principal of his debt, any additional payment of a percentage on his judgment, would be in excess of the dividends paid to the other creditors.

The assets of the bank not being sufficient to pay its

indebtedness in full, the creditors whose claims were approved, were paid sixty-five per cent. of their principal indebtedness. They were paid nothing in respect of interest, nor was there any interest included in the indebtedness in respect of which dividends were paid to them.

The dividends payable to the relator were withheld until about the time he obtained his judgment. During that time he was deprived of the use of the money which was finally decided to belong to him.

During the same time the creditors whose claims were undisputed had the use and enjoyment of the dividends paid to them.

But that fact certainly can give to the relator no right to have interest computed and allowed to him from the time of the failure of the bank, and for a period in respect of which no interest was paid to the creditors whose claims were allowed.

If the relator is entitled to interest, the creditors whose claims were undisputed are entitled to interest.

If interest is to be taken into account, then interest should be calculated on all the claims from the date of the failure of the bank, and the dividends paid applied as partial payments at the date the same were made.

The result of this method of computing the claims of creditors is substantially the same in cases where the assets are not sufficient to pay the principal indebtedness, as the result of making dividends on the principal indebtness without reference to the interest, as may be seen from the example given in an appendix to this brief.

The moneys realized from the assets of insolvent banks on deposit in the treasury are subject to the order of the Comptroller of the Currency, but he has no authority to invest them, and no opportunities to increase them by making loans.

It is his duty to resist all claims that he considers un-

founded, and the loss to the creditor whose claim is disputed of interest on dividends withheld, like the loss of interest to the creditor whose claim is undisputed, seems a necessary incident to the insolvency of the bank.

V.

The judgment of the court below should be affirmed.

NATH'L WILSON,
Att'y for Respondent in Error.

APPENDIX.

For the purpose of illustration, the following case is presented:

A national bank fails on January 1, 1880. A receiver is then appointed and claims are presented for allowance. He allows claims amounting to $400,000, but disputes a claim of $100,000. The claimant of the latter amount institutes a suit and obtains judgment on January 1, 1884, for the principal of his debt, and for four years' interest thereon at ten per cent. In the meantime, three dividends have been declared on the face of the claims, viz., 25 per cent. on January 1, 1881; 25 per cent. on January 1, 1882: 25 per cent. on January 1, 1883. These dividends are paid on the allowed claims and are reserved on the claim in dispute. The amount paid is $300,000 on $400,000 of allowed claims. The amount reserved is $75,000 on the $100,000 claim in dispute. On January 1, 1884, when the judgment is obtained on the disputed claim, payment of $75,000 is offered on the principal of the claim, ($100,000), but payment is refused on the interest, ($40,000), included in the judgment, on the ground that other claimants have received no interest, and that there is not enough remaining on hand to pay the principal of all claims in full. The holder of the disputed claim accepts the $75,000 payment on the principal, but reserves his right to enforce payment in respect of the interest.

There is but $50,000 remaining to be distributed. The question is how shall this be done?

There are three methods of distribution:

First, that insisted upon by the holder of the claim allowed by judgment. This is that he should receive 75 per cent. on the full amount of his judgment, including inter-

est, whether other creditors receive interest or not Seventy-five per cent. on his judgment for $140,000 would be $105,000. He has received $75,000, leaving $30,000 still due him to be paid from the $50,000 before any further distribution is made to all creditors of the amount on hand. If this were done, it would leave $20,000 to be distributed among all claims, viz.:

Other claims	$400,000
Proved by judgment	140,000
Total	$540,000

The $20,000 remaining, distributed among claims amounting to $540,000, would give a percentage of about 37 per cent., or $14,800, on the face value of $400,000 of undisputed claims, and $6,200 on the $140,000 of claim and interest proved by judgment.

The $100,000 claim would thus receive $111,200, and the $400,000 other claims would receive $314,800. One th[illegible] receive 111.2 per cent. on principal and the other wou[illegible]nt. only on principal.

78.7 per [illegible] method is, to distribute the $50,000 on hand

The secon[illegible]he principal of all the claims. This will on the basis of [illegible]d to the interest included in the judgment— give—without reg[illegible]

[illegible]	$400,000
Undisputed claims	100,000
Judgment claim	[illegible]
	$500,000

Total[illegible] added to the 75 of which $50,000 is ten per cent. Th[illegible]r cent. on all per cent., already received, will allow 85 [illegible] claims, viz.:

[illegible]	$340,000
Upon $400,000	[illegible],000
$100,000	[illegible]
$500,000	$425,000

A third method, and perhaps the fairest of all, is to regard all dividends as partial payments at the time of their payment on the debt represented by the claims.

In this view the amount due January 1, 1884, on the $400,000 of allowed claims would be as follows:

$400,000 claims:

Principal, Jan'y 1, 1880	$400,000
1 year's int., at 10 per ct., to Jan'y 1, 1881	40,000
Total, Jan'y 1, 1881	$440,000
Dividend, 25 per ct., Jan'y 1, 1881	100,000
Remainder, Jan'y 1, 1881	$340,000
1 year's int., at 10 per ct., to Jan'y 1, 1882	34,000
Total, Jan'y 1, 1882	$374,000
Dividend, 25 per ct., Jan'y 1, 1882	100,000
Remainder, Jan'y 1, 1882	$274,000
1 year's int., at 10 per ct., to Jan'y 1, 1883	27,400
Total, Jan'y 1, 1883	$301,400
Dividend, 25 per ct., Jan'y 1, 1883	100,000
Remainder, Jan'y 1, 1883	$201,400
1 year's int., at 10 per ct., to Jan'y 1, 1884	20,140
Amount due Jan'y, 11884	$221,540

$100,000 claim:

Principal, Jan'y 1, 1880	$100,000
4 year's int. at 10 per ct., to Jan'y 1, 1884	40,000
Amount due Jan'y 1, 1884.	$140,000

	$140,000
Dividend, 75 per ct., Jan'y 1, 1884.....	75,000
Remainder, due Jan. 1, 1884	$65,000

Taking the two sums, viz., $221,540 and $65,000, in all $286,540, as a new principal, and distributing the $50,000, will give a dividend upon it of about 17.5 per cent.

17.5 per cent. on $221,500, is about.....	$38,700
" " " 65,000, "	11,300

The total amount paid on $400,000 will then be $338,700, and on $100,000, $86,300; or, 84.7 per cent. on the first and 86.3 per cent. on the last. This difference in percentage in favor of the $100,000 claim is the compensation for delay in the payment of the first three dividends.

111 784

THE UNITED STATES, ex rel
STEPHEN V. WHITE,

vs.

JOHN JAY KNOX,
Comptroller.

October Term, 1883.
No. 1266.

The plaintiff in error, in reply to the points made in brief of defendant in error, says as to the first point, viz, that the petition should state that the comptroller has $21,379.66 of money in hand to pay this claim, submits—

I.

1. This court will presume that a public officer has not violated the law. If the position that the relator is entitled to ratable dividends on his judgment is correct, then it is the comptroller's duty to have the money, inasmuch as he has paid other persons 65 per cent. of their claims and should pay relator.

2. It is in effect charged that the money is on hand, as at top of second page of record, the relation shows that the $46,560.66 was paid without prejudice to his rights to insist upon the payment of the $21,379.66.

3. Good faith in pleading would not permit the relator to be deprived of his rights from the omission of an averment so easily made and proven on the trial of the merits of this case, upon a return which puts in question solely the jurisdiction of the court to issue the mandamus. Upon such return, we are ready to discuss the substantial merits of the real question in controversy, viz, whether the Comptroller has the judicial discretion to

reject so much of the judgment as he says is made up of interest, accruing *pendente lite*, but plaintiff in error does not consent that on a plea to the jurisdiction, the absence of this averment (if the court should deem it necessary) shall be ground for sustaining such plea.

II.

The answer to the second defence is this.

All necessary charges are first to be deducted form the fund before any dividends are declared at all. Then the dividends are to be *pro rata*. We are not asking a mandamus to compel the Comptroller to declare a 65 per cent. dividend: we aver that he has declared the dividends of 65 per cent. and we ask this court to direct him to pay our dividend ratably.

III.

The answer to the third defence is: That we concede, if after a claim is adjudicated there is any discretion under the statute reposed in defendant as to the disposition of the claim that we are not entitled to a mandamus.

This contention is that the only duty left is to pay a ratable dividend on the judgment and that *that* duty is ministerial.

IV.

No stronger affirmative argument for plaintiff in error can be adduced than the *reductio ad absurdum* to which the fourth defence and the tiresome figuring from from the well-known pencil of defendant in error himself (found in the appendix.) leads us. Suppose the Comptroller's arithmetic should prove as bad as his law was, which led him to squander thousands of dollars in trying to defeat this just claim.

Suppose he arbitrarily says I figure the claim at the time the bank failed as adjudicated by the court to have been $50,000 instead of $60,000; what redress is there then.

Eight years are spent in litigation; thousands of dollars are spent; the court adjudicates the claim at $104,523, 73, and thereupon it says to the Comptroller in effect. "Here Mr. Comptroller; we have found $104,523.72 due this claimant. Please take your slate and pencil and figure out what you think you ought to pay him, as of the day the bank failed. Over your computation we have no control."

As against such are absurdity the plaintiff in error says the simple unmistakable meaning of the law is that when the Comptroller rejects a claim he sends it to the courts. When a court of competen t jurisdiction decides it he takes the judgment, and in the language of this court in *National Bank vs. Mechanics Bank*, 94 U. S. page 439 lets, it "occupy the same legal ground" as others claims, and pays ratable dividends thereupon.

S. V. WHITE,
of Counsel.